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AUTHOR Feinberg, Rosa Castro
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ABSTRACT

This memorandum clarifies the latest policy changes at the Federal level relative to the provision of educational services (including language programs and desegregation) to national origin minority students. The information in the memo is based on a review of the legal obligations which school districts are currently subject to, according to the latest interpretations of the law by the courts and on internal directives issued by the Office for Civil Rights as of June 1982, on national origin minority compliance requirements. The memo, in a question and answer format, discusses present and likely future requirements for the development and revision of Lau compliance plans. (CMG)

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UNIVERSITY OF MIAMI
CORAL GABLES, FLORIDA 33124

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MIAMI DESEGREGATION ASSISTANCE
CENTER FOR NATIONAL ORIGIN
(BILINGUAL EDUCATION)
SCHOOL OF EDUCATION
P.O. BOX 248065

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TO THE EDUCATIONAL RESOURCES
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TO: Clients and Colleagues
FROM: Rosa Castro Feinberg, Director
RE: Lau Compliance Policy Development

Numerous requests have been directed to this office asking for clarification regarding the latest policy changes at the federal level relative to the provision of educational services to national origin minority (NOM) students. Our function as a technical assistance center is to provide advice on such services based on our best professional judgment of what constitutes sound educational policies and programs, rather than to provide conclusive legal interpretation of the issues. Nevertheless, the information presented in this memo is based on a careful review of the legal obligations which school districts are currently subject to according to the latest interpretations of the law by the courts, and on internal directives issued by the Office for Civil Rights (OCR) as of June, 1982, on national origin minority compliance requirements. State education agency officials may also find this review of requirements of considerable interest in view of the Ninth Circuit Court of Appeals' decision in Idaho Migrant Council v. Board of Education, which holds that a state education agency is required under federal law to insure that needs of students with limited English language proficiency are addressed.

1. Must school districts continue to implement plans for special educational services for limited English proficiency students?

Yes. School districts must continue to implement Lau compliance plans previously accepted by the Office for Civil Rights.

2. What is the legal basis for decisions made by the Office for Civil Rights regarding national origin discrimination?

Since June of 1981, all national origin desegregation matters arising anywhere in the country have been referred to OCR's Washington office for review. Title VI of the Civil Rights Act of 1964, the HEW May 25, 1970 Memorandum, and the Lau decision are referred to by that office when making Lau Compliance decisions. The mode of analysis employed by the Fifth Circuit Court in the Castaneda decision has been recommended for OCR Regional office implementation of "reasonable and effective" Lau enforcement.

In addition, civil action can be instituted by individuals under the provisions of the Equal Educational Opportunity Act of 1974.

3. What goals of the administration in the Department of Education apply to national origin discrimination policy development?

Overall, Title VI/Lau Enforcement Policy is being developed in accord with Secretary Bell's twin objectives of allowing school districts greater flexibility in meeting the educational needs of language minority children while insuring that the civil rights of these children are met.

4. Can Compliance Plans be revised?

Although the press has only recently announced that OCR will review requests for revision of Lau plans, in actuality this is nothing new. Requests for modification of previously negotiated plans could have been submitted to OCR at any point, along with adequate justification. However, close scrutiny can be expected for such requests while OCR is in the process of formulating new policies in this area of Title VI compliance. Furthermore, I would predict on the basis of 9 years of experience in this area, that final policy will not be developed (or requests for modification approved) before 1983.

5. Should districts intending to improve their programs for limited English proficiency students submit requests for plan modifications now?

No. My recommendation is that no consideration be given to modification of compliance plans prior to announcement of OCR's final policy development in this area. An extended delay between the time of submission of the request for modification and an approval by OCR of such a request would have a deleterious effect on school community relations, staff moral, and program effectiveness, and also have a serious and negative impact on sound program and budget development plans. Given the absence of a formal published policy, any plan developed now could become the lightning rod for private civil rights litigation or it could embroil the district in a broader national controversy.

6. Must districts offer bilingual programs in order to avoid a determination by OCR of non-compliance with Title VI?

No. Such programs are not presently required for this purpose nor are they likely to be required in the near future. Nevertheless, bilingual education programs have been widely accepted as appropriate means of providing equal educational opportunities to limited English proficiency students, and will continue to be found acceptable. Fairfax County, Virginia (one of the wealthiest school districts in the country), for example, because of its phenomenal commitment of financial resources to its special programs for limited English proficiency students, amounting to approximately \$3,446. per program student, with a range of from 25% to 100% over the district's regular per capita expenditures, and because of the effectiveness of these programs, has become well known as a district which does not provide bilingual education but has not been found out of compliance with Title VI. These programs include targeting of a critical mass of instructional resources and of bilingually delivered supportive services to students who score close to or above national norms on subject matter achievement tests. Furthermore, some districts which offered inadequate bilingual programs have been sued or cited for non-compliance. Nevertheless, although bilingual programs are not per se required, selection of the bilingual education program option continues to be a district's most prudent course of action.

7. What are the responsibilities of school officials in districts with limited English proficiency students?

A. They must take affirmative steps to remediate the English language skill deficiencies of students with limited English proficiency so that these students can participate in and benefit from the district's regular instructional program on an equal basis with non-minority students.

B. In addition, school officials must insure that these students have the opportunity to achieve academic parity with non-minority students in the acquisition of non-language subject matter skills.

New plans, as well as future modification of old plans, must demonstrate that these dual responsibilities will be met through a program which is:

1. Based on sound educational theory
 2. Implemented effectively, with appropriate practices, level of resource allocation, and qualified personnel
 3. Successful in bringing about the desired results, as evidenced by the results of evaluation techniques conducted in the appropriate languages. (Castaneda v. Pickard, 648F2d 989 (5th Circuit, 1981).)
 4. Characterized by adequate and effective communication with national origin minority group parents (May 25, 1970 Memorandum).
8. What is likely to be required of districts developing new or revised compliance plans for national origin minority desegregation?

A definitive answer to that question is not possible until OCR has completed its process of policy development for national origin minority desegregation. In the meantime, it is reasonable to suppose that the following rulings, taken from the Castaneda decision, will be applicable.

A. Stricter standards than those presently enforced may prevail in judging plans from districts which have a past history of unlawful discrimination which is in the process of remediation through conversion to a unitary school system or from districts which have not erased the effects of past discrimination in such areas as employment, ability grouping, student assignment, tracking, home school communication, and placement in special education programs. In such districts, ability grouping practices which are based solely on determination of English language proficiency may be prohibited. These same districts may also be required to submit comparisons between the racial composition of the district's staff and the racial composition of the qualified population in the relevant labor market.

B. Districts may be required to document that their plans for special educational programs are consistent with "local circumstances and resources". Parental preference regarding program options, the extent of language minority community infrastructure development, the size of these communities, the degree to which literate bilingualism is likely to be a vocational asset, the area's migration patterns, and the presence or absence of military installations, universities, Indian reservations, or multinational corporations are all likely to be considered relevant local conditions.

C. Special educational programs for language minority students should enable them to "participate on equal terms" with their English language origin classmates in regular instructional programs. Program evaluation plans should be designed to demonstrate that this "academic parity" has been achieved in subject matter areas and that limited English proficiency students have acquired "English language proficiency comparable to that of the average native speaker" of English.

- D. Special educational programs for national origin minority students are to be implemented by qualified teachers, adequately prepared to provide instruction in the appropriate language or languages. The use of instructional Aides will be considered appropriate only as an interim measure.
- E. Other factors flowing from Castaneda which OCR may take into consideration include the requirement for achievement and ability testing procedures leading to results which are not influenced by language barriers (a concern which may also extend to state and local competency testing programs), and the criteria for access to college preparatory courses (see also item 2, 1970 Memorandum).

Rosa Castro Feinberg

Appendices have been removed because of reproducibility.